

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TWANIKA JOHNSON,

No C-03-0506 VRW

Plaintiff

ORDER

v

JOANNE B BARNHART,
Commissioner of Social Security,

Defendant.

_____ /

Plaintiff appeals from the decision of the Social Security Administration ("SSA") denying plaintiff social security disability benefits. The parties have filed cross motions for summary judgment. Pl Mot (Doc #13); Def Mot (Doc #15). Based on a careful review of the administrative record and of the applicable law, the court DENIES plaintiff's motion and GRANTS defendant's motion.

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I

A

Plaintiff alleges disability since birth due to limited vision in the right eye. Administrative Record ("AR") at 13. On May 17, 1999, ophthalmologist Dr Leo Capocchi first examined plaintiff's vision. AR at 149. Dr Capocchi reported that plaintiff had experienced ocular misalignment since shortly after her birth on January 24, 1996. Id. Plaintiff had a large right extropia, but her eyes otherwise appeared "grossly normal." Id. Atropine refraction revealed -6.00 right myopia and +.50 left hyperopia; plaintiff had "at least finger counting vision [in the] right eye and apparently normal vision [in the] left eye." Id. Dr Capocchi recommended referral to a pediatric ophthalmologist. Id.

Upon referral in summer 1999, Dr Creig Hoyt, director of pediatric ophthalmology at UCSF Stanford Health Care, recommended that plaintiff wear a patch over her left eye for eight hours a day to improve vision in her right eye. AR at 159, 174. On January 20, 2000, Dr Hoyt wrote to Dr Capocchi that eye patching had improved the visual acuity in the right eye to only 20/80ths. AR at 159. Dr Hoyt expressed concern that the right eye might have eccentric fixation. Plaintiff still suffered from anisometropic refractive error, with the right eye significantly myopic. Id. Dr Hoyt reported that he could not be certain whether there was "a significant disc anomaly that accounts for some of the visual problems." Dr Hoyt concluded: "I think we at least need to renew our efforts in trying to treat this patient over the next few months. If visual acuity cannot be improved further, reassessment of the underlying structural processes may be indicated." Id.

1 On April 18, 2000, Dr Hoyt reported that the patching had
2 proved unsuccessful. AR at 174. Although plaintiff had been
3 patched for eight hours per day for almost a year, there was little
4 evidence that the vision in the amblyopic eye was improving. Id.
5 Dr Hoyt noted that he would perform an evaluation under anesthesia
6 to ensure that there was "no structural pathology that precludes
7 the ability to rehabilitate the anisometropic eye." Id.

8 After this evaluation under anesthesia, AR at 176,
9 plaintiff saw Dr Hoyt in November 2000. Dr Hoyt found that
10 plaintiff still had "dense amblyopia in the right eye with almost
11 eccentric fixation." AR at 171. In addition, Dr Hoyt concluded
12 that patching therapy had been "only marginally effective." Dr
13 Hoyt nevertheless continued the patching program over her left eye
14 through December 2001. AR at 166, 167. On December 7, 2001, Dr
15 Hoyt reported that "[v]isual acuity remains at 20/400 in the right
16 eye with eccentric viewing." Dr Hoyt planned to maintain patching
17 of the left eye, though only on a thirty-minute-per-day basis and
18 to continue to see plaintiff periodically. Id.

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20 B

21 In addition to plaintiff's eye problems, plaintiff claims
22 that she also experienced behavioral and emotional problems. While
23 living with her grandmother until the age of two, plaintiff endured
24 beatings from her grandmother's boyfriend. AR at 40-41. In May
25 1998, plaintiff's great grandmother, Ruth Hamilton, took over
26 custody of plaintiff to prevent her from being sent to a foster
27 home. Id.

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1 In the fall of 1998, Plaintiff enrolled in Valencia
2 Gardens pre-school. AR at 41. It took plaintiff three to four
3 months to get into pre-school because she required special care due
4 to her severe eye problem. Id. Evaluating plaintiff between
5 November 1998 and February 1999, Valencia Pediatrics reported that
6 plaintiff had a history of exotropia, mild dry skin, temper
7 tantrums and difficulty sleeping at night. AR at 130-35.

8 Valencia Gardens teacher Eva White also assessed
9 plaintiff's social behavior between June and September 1999. AR at
10 126-29. In June 1999, plaintiff had difficulty completing
11 activities, and her attention span was short. AR at 126. She
12 walked always looking down and had trouble climbing stairs and
13 peddling a tricycle. She was very distant at times, choosing not
14 to communicate with adults. Id. In addition, she did not share or
15 get along well with other children. Id.

16 By August 1999, plaintiff's behavior had significantly
17 improved. White reported in August that "[plaintiff] comes on her
18 own now to listen to stories being read" and that "[plaintiff's]
19 confidence in climbing and getting down from high places has
20 improved tremendously." AR at 126-27. Plaintiff was more excited
21 about participating in activities, was "gradually asking for help
22 and talking to adults," and was "learning to share and get along
23 well with other children." AR at 126-29. In her concluding
24 comments, White stated that while plaintiff experienced
25 difficulties at the start of the program, by August 1999 she was
26 "doing very well in the center. This was definitely a need for
27 her. She is a happy child [who] loves to come to school, [and]
28 loves her playmates and teachers." AR at 129.

1 At the April 11, 2000, hearing, Ms Hamilton testified that
2 she had observed plaintiff experiencing emotional and behavioral
3 difficulties at Valencia Gardens. AR at 43-60. Ms Hamilton
4 testified that plaintiff: pushed and shoved her playmates; cried
5 about having to wear an eye patch for eight hours per day because
6 of her difficulty seeing; had difficulty climbing monkey bars and
7 riding her tricycle; and had sleep problems, refusing to take a nap
8 at school. AR at 46, 48, 51, 53-54.

9 Ms Hamilton testified that plaintiff experienced similar
10 problems at home. AR at 54-60. Ms Hamilton stated that plaintiff
11 had difficulty falling asleep and needed to be accompanied to the
12 bathroom at 3:00am. AR at 54. Ms Hamilton testified further that
13 plaintiff: had difficulty distinguishing colors and needed help
14 with getting dressed, washed or bathed; cried sometimes, wanting to
15 see her mother; threw daily temper tantrums "when she c[ouldn't]
16 get her way"; and was a "very picky eater" with poor eating habits.
17 AR at 56, 114, 57, 57-58.

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19 C

20 On March 30, 1999, plaintiff filed an application with
21 the SSA for Supplemental Security Income ("SSI") payments alleging
22 disability since birth due to limited vision in the right eye. AR
23 at 13. Non-examining State Agency physicians Dr Darnell Richey and
24 Dr Phillip Suster conducted SSA Childhood Disability Evaluations of
25 plaintiff. AR at 136-46. In June 1999, both doctors concluded
26 that although the impairment was "severe," it did not "meet,
27 medically equal, or functionally equal the severity of a listing."

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1 AR at 136. Accordingly, on June 30, 1999, the SSA denied
2 plaintiff's application for SSI. AR at 65, 68-70.

3 After plaintiff requested reconsideration in August 1999,
4 AR at 71, non-examining State Agency physician Dr SD Battis
5 confirmed Dr Richey's and Dr Suster's findings that plaintiff's
6 impairment was insufficient to warrant receiving SSI. AR at 150-
7 58. Plaintiff's request for reconsideration was denied in
8 September 1999. AR at 72-75. In November 1999, plaintiff filed a
9 request for a hearing before an Administrative Law Judge ("ALJ").
10 AR at 76.

11 The ALJ held a hearing on April 11, 2000, at which Ms
12 Hamilton and medical expert Dr Moses Grossman testified. AR at 33-
13 64. Dr Grossman belonged to the American Board of Pediatrics and
14 practiced at San Francisco General Hospital. AR at 89.

15 To determine whether plaintiff was disabled, and thus
16 entitled to SSI benefits, the ALJ considered two specific issues as
17 required by section 1614(a)(3)(C) of the Social Security Act ("the
18 Act"): (1) whether plaintiff was engaging in "substantial gainful
19 activity" and (2) "whether she has a medically determinable
20 physical or mental impairment which results in marked and severe
21 functional limitations, and which can be expected to result in
22 death or which has lasted or can be expected to last for a
23 continuous period of not less than 12 months." AR at 13.

24 The ALJ found that: (1) plaintiff's lack of vision in
25 the right eye was a severe impairment, 20 CFR § 416.924(c), and (2)
26 the statements made by the plaintiff's guardian, Ms Hamilton, were
27 credible. AR at 16. The ALJ held, however, that (3) the
28 limitations, resulting from the effects of the plaintiff's

1 impairment, do not meet, medically equal or functionally equal the
2 criteria of any of the listed impairments in Appendix 1, Subpart P,
3 Part 404. Id; 20 CFR § 416.924(d). Finally, the ALJ concluded
4 that (4) plaintiff does not have a medically determinable physical
5 or mental impairment that results in marked or severe functional
6 limitations and (5) plaintiff has not been under a "disability" as
7 defined in the Act, at any time through the date of this decision.
8 AR at 16. On April 24, 2000, the ALJ denied benefits to plaintiff.
9 Id.

10 In reaching this decision, the ALJ considered Ms
11 Hamilton's and Dr Grossman's testimony in determining that
12 plaintiff's impairment(s) did not meet or medically equal the
13 listings. AR at 14. The ALJ wrote: "The medical expert, Dr Moses
14 Grossman[,] stated that the claimant has no vision in her right eye.
15 Because she has a good eye, however, she does not meet the Listings.
16 The undersigned finds the claimant['s] impairment (or impairments)
17 does not meet or medically equal the criteria of any of the listed
18 impairments * * *." Id. Next, the ALJ stated the appropriate law
19 for determining functional limitation and cited the medical reports
20 of Drs Capocchi and Hoyt and the Childhood Disability Evaluation
21 Form in determining that plaintiff's impairment(s) did not
22 functionally equal the listings. AR at 15-16.

23 Plaintiff appealed the ALJ's decision to the SSA's
24 Appeals Council ("Appeals Council") on June 22, 2000. AR at 8-9.
25 The Appeals Council considered: (1) "the applicable statutes,
26 regulations, and rulings in effect as of the date of this action";
27 (2) the final regulations, effective January 2, 2001, implementing
28 the childhood disability provisions of Public Law 104-193; (3) the

1 contentions raised in plaintiff's August 21, 2002, brief; and (4)
2 the additional evidence identified on the attached Order of the
3 Appeals Council. AR at 4. The Appeals Council found that none of
4 these provided a basis for changing the ALJ's decision. Id. On
5 December 6, 2002, the Appeals Council declined to review the ALJ's
6 decision, and the ALJ's decision became final. AR at 4-5.

7 On February 5, 2003, plaintiff timely filed the instant
8 action for judicial review of the final decision. Compl (Doc #1).

10 II

11 The court's jurisdiction is limited to determining
12 whether the SSA's denial of benefits is supported by substantial
13 evidence in the administrative record. 42 USC § 405(g). A
14 district court may overturn a decision to deny benefits only if the
15 decision is not supported by substantial evidence or if the
16 decision is based on legal error. See Andrews v Shalala, 53 F3d
17 1035, 1039 (9th Cir 1995); Magallanes v Bowen, 881 F2d 747, 750
18 (9th Cir 1989). The Ninth Circuit defines "substantial evidence"
19 as "more than a mere scintilla but less than a preponderance; it is
20 such relevant evidence as a reasonable mind might accept as
21 adequate to support a conclusion." Andrews, 53 F3d at 1039.
22 Determinations of credibility, resolution of conflicts in medical
23 testimony and all other ambiguities are to be resolved by the ALJ.
24 See id; Magallanes, 881 F2d at 750. The decision of the ALJ will
25 be upheld if the evidence is "susceptible to more than one rational
26 interpretation." Andrews, 53 F3d at 1040.

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III

A

Section 1614(a)(3)(C)(I) of the Act defines a child as "disabled" if she "has a medically determinable physical or mental impairment, which results in marked or severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 USC § 1382c(a)(3)(C)(I). The SSA "consider[s] all relevant evidence in your case record when we make a determination or decision whether you are disabled * * *. Thus, we will consider the combined effects of all your impairments upon your overall health and functioning." 20 CFR § 416.924(a).

When a child plaintiff files an application for benefits, the SSA conducts a three-step evaluation process to determine whether the child is disabled. *Id.* For a child to be determined disabled, (1) she must not be involved in "substantial gainful activity," (2) she "must have a medically determinable impairment that is severe," and (3) her "impairment(s) must meet, medically equal or functionally equal the listings." 20 CFR § 416.924(b)-(d).

An impairment is medically equivalent to a listed impairment in Appendix 1, Subpart P, Part 404 "if the medical findings are at least equal in severity and duration to the listed findings." 20 CFR 416.926(a). If they are not, the SSA "will nevertheless find that your impairment is medically equivalent to that listing if you have other medical findings related to your impairment that are at least of equal medical significance." 20 CFR 416.926(a)(1)(ii).

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1 20 CFR § 416.926a sets forth the regulations determining
2 functional equivalence for children. Because these regulations
3 changed effective January 2, 2001, the ALJ – who made his decision
4 in April 2000 – and the Appeals Council – which made its decision in
5 December 2002 – were required to consider different regulations when
6 coming to their decisions.

7 Prior to January 2, 2001, the regulations prescribed four
8 methods that the SSA may use to decide whether an impairment is
9 functionally equivalent in severity to a listing: (1) limitation of
10 specific function; (2) broad areas of development or function; (3)
11 episodic impairments; and (4) limitations related to the effects of
12 treatment or medication. 20 CFR § 416.926a(b).

13 Under the second method, the SSA evaluated children
14 between the ages of three and eighteen in terms of five areas of
15 development: cognitive and communicative development; motor
16 development; social development; personal development; and
17 concentration, persistence and pace. 20 CFR 416.926a(c)(5)(iii).
18 Disability was established if the child had an extreme degree of
19 restriction in one area of functioning or marked limitation in two
20 areas of function. 20 CFR § 416.926a(b)(2). An extreme restriction
21 was present if there was "no meaningful function in a given area,"
22 and a marked limitation arose when the "degree of limitation is such
23 as to interfere seriously with the child's functioning." 20 CFR §
24 416.926a(c)(3).

25 As of January 2, 2001, the regulations instruct the SSA to
26 determine functional equivalence by considering how the child
27 functions in six types of activities: (1) acquiring and using
28 information, (2) attending and completing tasks, (3) interacting and

1 relating to others, (4) moving about and manipulating objects, (5)
2 caring for [her]self and (6) health and physical well-being. 20 CFR
3 § 416.926a(b)(1). Similar to the superceded regulation, the SSA
4 decides that a child's impairment functionally equals the listings
5 if it is of "listing-level severity[:] if [the child has] 'marked'
6 limitations in two of the domains in paragraph (b)(1) of this
7 section, or an 'extreme' limitation in one domain." 20 CFR §
8 416.926a(d). The definitions of "marked" and "extreme" remain the
9 same. 20 CFR § 416.926a(e)(2)-(3).

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11 B

12 Plaintiff offers three arguments why the ALJ's decision
13 should be reversed and the case remanded for rehearing. First,
14 plaintiff contends that the Appeals Council "failed to apply the
15 final rules" effective January 2, 2001, in denying plaintiff's
16 request for review. Pl Mot at 10. Second, plaintiff asserts that
17 the ALJ failed to "discuss or articulate any rationale for finding
18 that [p]laintiff's impairments did not medically equal or
19 functionally equal a listed impairment." Id at 11-12. Finally,
20 plaintiff argues that the ALJ did not make a reasonable effort to
21 obtain a "case evaluation" from a pediatrician or appropriate
22 specialist. Id at 15. The court examines each argument in turn.

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24 1

25 SSA regulations provide that the Council will grant a
26 request for review where: (1) there appears to be an abuse of
27 discretion by the ALJ; (2) there is an error of law; (3) the ALJ's
28 action, findings or conclusions are not supported by substantial

1 evidence; or (4) there is a broad policy or procedural issue that
2 may affect the general public interest. The regulations also
3 provide that where new and material evidence is submitted with the
4 request for review, the entire record will be evaluated and review
5 will be granted if the Council finds that the ALJ's actions,
6 findings or conclusions are contrary to the weight of the evidence
7 currently of record. 20 CFR 416.1470(a)-(b).

8 As to the change in rules effective January 2, 2001, the
9 SSA stated: "When the final rules become effective, we will apply
10 them to new applications filed on or after the effective date of the
11 rules. We will also apply them to the entire period at issue for
12 claims that are pending at any stage of our administrative review
13 process * * *." 65 FR 54747 (9/11/01).

14 The Council followed the above rules in coming to its
15 decision. In denying request for review, the Council wrote that it
16 had "considered the contentions raised in [plaintiff]'s brief dated
17 August 21, 2002, as well as the additional evidence also identified
18 on the attached Order of the Appeals Council." AR at 4. The
19 Council also "considered the final regulations, effective January 2,
20 2001, implementing the childhood disability provisions of Public Law
21 104-193." Id. The Council held that neither the additional
22 evidence nor the new regulations "provide[d] a basis to change the
23 Administrative Law Judge's decision." Id.

24 Plaintiff argues that the ALJ "did not even evaluate
25 Plaintiff's case using the six domains of functioning." Pl Mot at
26 11. Plaintiff also contends that the Council's "conclusory
27 assertion that it had considered the final rules fails to rise to
28 the level of articulation required by circuit precedent." Id.

1 Plaintiff, however, fails to provide support – in the form of a
2 regulation or judicial authority – for either of these contentions.

3 In contrast, defendant cites a Seventh Circuit case
4 holding that the Council properly denied a child plaintiff's request
5 for review based on final rules for evaluating child disability.
6 Def Mot at 6 (citing Keys v Barnhart, 347 F3d 990, 994 (7th Cir
7 2003)). In denying request for review, the Council in Keys stated
8 that it "ha[d] considered the final regulations * * * implementing
9 the childhood disability provisions * * * [and found that the] new
10 regulations do not provide a basis to change the [ALJ]'s decision."
11 Id at 992. In affirming the Commissioner's final decision, the
12 Seventh Circuit held:

13 Had the Council just said we're denying review
14 because we're too busy, then the only decision
15 for the courts to review would be that of the
16 [ALJ]. But that was not the character of the
17 Council's reason for denying review; its reason
18 was that the new regulations would make no
19 difference to the outcome. That was a
20 reasonable substantive judgment to which we
21 would defer even if we did not independently
22 believe that the changes brought about by the
23 new regulations do not help Keys.

19 Id at 995 (emphasis added).

20 The Keys court stated further that "the differences
21 between the old and new regulations are not great" and "the report
22 accompanying the final regulations confirms that the purpose of the
23 revision was 'largely to clarify' the earlier categories and to
24 'rename, and to some extent to reorganize, the prior areas of
25 functioning.'" Keys, 347 F3d at 994 (quoting 65 Fed Reg 54756
26 (9/11/00)).

27 In its decision denying review, the Appeals Council
28 specifically stated that it had considered the new regulations and

1 found that they did not provide a basis to change the ALJ's
2 decision. AR at 4. The Council also noted that it had considered
3 the additional evidence submitted with the appeal (see AR at 6). AR
4 at 4. It found no abuse of discretion by the ALJ, no error of law,
5 no evidence and no policy concern that warranted overturning the
6 ALJ's decision. Id. Applying the rationale of Keys, the court
7 concludes that the Council's decision was a "reasonable substantive
8 judgment" and therefore rejects plaintiff's first argument.

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11 Plaintiff contends that the ALJ's decision should be
12 reversed and the case remanded for rehearing because the ALJ failed
13 to "discuss or articulate any rationale for finding that Plaintiff's
14 impairments did not medically equal or functionally equal a listed
15 impairment." Pl Mot at 11-12. Plaintiff cites Ninth Circuit
16 precedent as support: "[I]n determining whether a claimant equals a
17 listing under step three of the Secretary's disability evaluation
18 process [medical and functional equivalence tests], the ALJ must
19 explain adequately his evaluation of alternative tests and the
20 combined effects of the impairments." Marcia v Sullivan, 900 F2d
21 172, 176 (9th Cir 1990).

22 In the instant case, the court holds that the ALJ did
23 adequately explain his evaluation of plaintiff's record and based
24 his findings on substantial evidence.

a

27 The ALJ found first that plaintiff's impairment(s) did not
28 meet the criteria of any of the SSA's listed impairments. AR at 14.

1 The ALJ considered both Ms Hamilton's and Dr Grossman's testimony in
2 reaching this decision. Id. After recounting in detail Ms
3 Hamilton's testimony about plaintiff's emotional and behavioral
4 problems, the ALJ quoted Dr Grossman: "[Plaintiff] has no vision in
5 her right eye. Because [plaintiff] has one good eye, however, she
6 does not meet the Listings." Id. Specifically, plaintiff did not
7 meet listing 20 CFR Pt 404, Subpt P App 1, § 2.02 (impairment of
8 visual acuity requires that vision in the better eye after best
9 correction be 20/200 or less).

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11 b

12 The ALJ's consideration of Ms Hamilton's and Dr Grossman's
13 testimony was also sufficient for the ALJ to determine that
14 plaintiff's impairment(s) did not medically equal a listed
15 impairment. An impairment is medically equivalent to a listed
16 impairment "if the medical findings are at least equal in severity
17 and duration to the listed findings" or "if you have other medical
18 findings related to your impairment that are at least of equal
19 medical significance." 20 CFR 416.926(a).

20 To equal a listed impairment, plaintiff "must establish
21 symptoms, signs and laboratory findings 'at least equal in severity
22 and duration' to the characteristics of the relevant listed
23 impairment * * *." Tacket v Apfel, 180 F3d 1094, 1099 (9th Cir
24 1999) (quoting 20 CFR § 404.1526). Furthermore, under Ninth Circuit
25 precedent, "the opinions of non-treating or non-examining physicians
26 may also serve as substantial evidence when the opinions are
27 consistent with independent clinical findings or other evidence in
28 the record." Thomas v Barnhart, 278 F3d 947, 957 (9th Cir 2002).

Both Ms Hamilton's and Dr Grossman's testimony demonstrate that plaintiff's emotional and behavioral problems were not medical equivalents. The ALJ thoroughly recounted Ms Hamilton's testimony, discussing plaintiff's physical problems, such as vision, movement and sleep, and social troubles, such as temper, shyness and loneliness. AR at 14. The ALJ and Dr Grossman reasonably concluded that these were not medical problems of the same "severity" or "duration" as the listed impairments. AR at 4, 60-61. Dr Grossman stated that plaintiff was "going through some difficulties, now, obviously, because what Dr Hoyt is trying to do is improve the vision in the right eye by patching the left eye, and that's causing her problems, obviously." AR at 60. Dr Grossman reasonably concluded that "[t]he other things we talked about [non-eye related problems], I think, are pretty normal behavior for a child, under her circumstances. And unfortunately, I do not think it either meets or equals the listings * * *." AR at 60-61 (emphasis added).

Dr Grossman's conclusions were uncontradicted by plaintiff's prior medical reports. AR at 136-46, 147-59. Accordingly, as a pediatrician who had reviewed the record, Dr Grossman's opinions represented substantial evidence. See Thomas, 278 F3d at 957. Moreover, plaintiff introduced no "symptoms, signs and laboratory findings" that established severity or duration equal to the listed impairment. See Tackett, 180 F3d at 1099. For the foregoing reasons, the ALJ's finding that plaintiff's impairment did not medically equal the listed impairments was supported by substantial evidence.

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The ALJ's determination that plaintiff's impairment(s) did not functionally equal a listed impairment found support not only in Ms Hamilton's and Dr Grossman's testimony, but also in the medical reports of Drs Capocchi and Hoyt and in the SSA's Childhood Disability Evaluation Form. AR at 15; AR at 147-59. Both Dr Capocchi and Dr Hoyt reported that plaintiff only suffered problems in her right eye. AR at 147-49, 159. Dr Capocchi stated further that plaintiff "appear[ed] to be otherwise normal during the office examination of eyes." AR at 148.

The Childhood Disability Evaluation Form directly dealt with the issue of functional equivalence. The State Agency physicians concluded that plaintiff's degree of limitation in four of five "areas of development or functioning" was "less than marked" (cognitive and communicative, motor, social and personal). AR at 138, 152. They found "no evidence of limitation" in the final category (concentration, persistence, or pace). Id. Accordingly, plaintiff's impairment(s) fell short of the requirement for functional equivalence: "extreme limitation" in at least one category or "marked limitation" in at least two. 20 CFR § 416.926a(b)(2).

By contrast, plaintiff has offered no theory based on evidence in the record that supports a finding of functional equivalence. In Lewis v Apfel, the Ninth Circuit held that plaintiff is responsible for pointing to evidence that shows that his combined impairments equal a listed impairment. 236 F3d 503, 514 (9th Cir 2001). In the instant case, plaintiff has similarly introduced no evidence that the lack of vision in her right eye

combined with her behavioral problems functionally equals a listing.

3

The instant case is clearly distinguishable from Howard. First, while the ALJ in Howard denied plaintiff's request for a

1 pediatrician to provide an expert evaluation, the ALJ in the present
2 case ensured that a "qualified individual" evaluated plaintiff's
3 entire case. The ALJ in the present case obtained the medical
4 expert testimony of pediatrician Dr Grossman. AR at 60-64, 87-88.
5 Dr Grossman belonged to the American Board of Pediatrics and
6 practiced at San Francisco General Hospital. AR at 89. Plaintiff's
7 counsel had no objection to Dr Grossman serving as a medical expert
8 at the April 11, 2000, hearing. AR at 58. Moreover, the ALJ sent
9 copies of all relevant medical exhibits to Grossman and informed him
10 that he would be asked to testify "as an expert medical witness on
11 the basis of the enclosed material as well as any additional
12 evidence that may be ordered at the hearing." AR at 87-88.

13 Most importantly, substantial evidence indicates that both
14 Dr Grossman and the ALJ examined the record in its entirety before
15 coming to a decision. Dr Grossman was present during the entire
16 hearing. AR 33-64. Dr Grossman heard Ms Hamilton's testimony about
17 plaintiff's medical and functional limitations; he asked his own
18 questions of Ms Hamilton; and he answered questions from the ALJ and
19 the plaintiff's attorney. Id. Dr Grossman asked Ms Hamilton about
20 both plaintiff's vision and sleeping problems, AR at 59-60, and
21 answered questions about Dr Hoyt's eye-patching treatment and the
22 childhood disability evaluation form. AR at 60-63. Considering
23 this breadth of evidence, Dr Grossman concluded that "normal [child]
24 behavior" and the temporary eye patching were the primary causes of
25 plaintiff's functional limitations. Id.

26 Furthermore, Dr Grossman's conclusion and the ALJ's
27 finding are supported by substantial evidence. Plaintiff argues
28 that neither Dr Grossman nor the ALJ addressed the Valencia

1 Pediatrics report (AR at 130-35), the statements of Valencia teacher
2 Eva White (AR at 126-29) or Ms Hamilton's testimony (AR at 35-63) in
3 reaching their decisions. This statement is only accurate in
4 regards to the Valencia records. These records, however, actually
5 support, rather than contradict, Dr Grossman's and the ALJ's
6 conclusions. The Valencia records document plaintiff's significant
7 improvement between November 1998 and August 1999, suggesting even
8 further that plaintiff's functional limitations were not primarily
9 caused by her vision impairment. AR at 126-35.

10 Accordingly, the court holds that the ALJ did make a
11 reasonable effort to obtain a case evaluation based on the record in
12 its entirety, and Dr Grossman competently provided such an
13 evaluation.

14
15 IV

16 In sum, the court affirms the ALJ's decision to deny
17 benefits. Because substantial evidence supported the ALJ's decision
18 and there was no legal error on the part of the Appeals Council or
19 the ALJ, the court DENIES plaintiff's motion for summary judgment
20 (Doc #13) and GRANTS defendant's motion summary judgment (Doc #15).

21 The clerk is directed to enter judgment in favor of the
22 defendant and to close the file.

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24 IT IS SO ORDERED.

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27 VAUGHN R WALKER
28 United States District Chief Judge